

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
v.) No. 1:20-cr-00338-JPH-MJD
)
)
FRANK PERKINS,) -01
)
)
Defendant.)

ORDER

The government has filed a Motion for Continuance of Trial Date and Final Pretrial Conference. Dkt. [37]. Mr. Perkins opposes the continuance or, in the alternative, seeks release to pretrial home detention. Dkt. 38. The Court **GRANTS** the government's motion for continuance, finding that an essential witness is unavailable on the current trial setting.

Mr. Perkins argues that a continuance violates his right to a speedy trial. *Id.* However, a period of delay "shall be excluded" from the Speedy Trial Act's time computations if the delay "results[] from the absence or unavailability of an essential witness." 18 U.S.C. § 3161(h)(3). A witness is considered unavailable "when h[er] whereabouts are known but h[er] presence for trial cannot be obtained by due diligence." *Id.*

The government asserts that one of its essential witnesses, Detective Angelika Foley, will be out of the country during the week of August 23, 2021, for a family obligation that was booked before the trial date was set. Dkt. 37 at

1. Thus, the delay attributable to the changed trial date shall be excluded from the Speedy Trial Act's time computation. 18 U.S.C. § 3161(h)(3)(A).

Moreover, the interests of the Defendant and the public in a speedy trial are outweighed by the need for the government to be able to call a witness whose testimony is essential to proving up the charged offense. The ends of justice support continuing the trial date for this reason. *See* 18 U.S.C. § 3161(h)(7).

Mr. Perkins states that he will withdraw his objection if the Court agrees to release him to pretrial home detention. *See* dkt. 38. This Court reviewed Mr. Perkins' detention status on January 25, 2021, and found that there are no conditions of release that will reasonably assure Mr. Perkins' appearance and the safety of the community. Dkt. 31. Mr. Perkins does not allege any changed circumstances, so for the reasons cited in this Court's Order on Motion to Review Detention Order, *id.*, the Court declines to release Mr. Perkins.

The Court thus **VACATES** both the August 16, 2021, final pretrial conference and the August 25, 2021, trial settings and **CONTINUES** them as follows: the final pretrial conference to **October 19, 2021, at 9:30 a.m.**; the jury trial to commence on **November 3, 2021, at 9:00 a.m.** in Room 246, United States Courthouse, 46 E. Ohio Street, Indianapolis, Indiana. The new trial date is firm and final, and the Court does not anticipate granting any further continuances in the absence of extraordinary circumstances.

SO ORDERED.

Date: 7/26/2021

James Patrick Hanlon

James Patrick Hanlon
United States District Judge
Southern District of Indiana

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